

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRR No. 849 of 2016

Deepak Kumar Ratre S/o Shri Revram Ratre, aged about 45 years, R/o village Nattikhar, near Palaria Farm House, Police Station Balco Nagar, Civil & Revenue District Korba, Chhattisgarh.

---- Applicant

Versus

1. Gurmeet Singh Lamba S/o Urmal Singh Lamba aged about 35 years, R/o Laluram Colony, T.P. Nagar, Korba, Chhattisgarh.
2. State of Chhattisgarh through District Magistrate, District Korba, Chhattisgarh.

---- Respondents

For Applicant	: Mr. Ashutosh Shukla, Advocate
For Respondent No.1	: Mr. Vikram Dixit, Advocate
For Respondent No.2	: Mr. Devendra Pratap Singh, Dy. A.G.

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Order on Board

20-11-2019

1. This revision petition has been brought challenging the legality, propriety and correctness of the order dated 29.8.2016 passed in Criminal Appeal No. 32 of 2016 by the District & Sessions Judge, Korba upholding the judgment of conviction and sentence passed by the trial Court.
2. Respondent No.1 – Gurmeet Singh Lamba filed a complaint under Section 138 of the Negotiable Instruments Act (for short 'the NI Act') against the applicant stating that the applicant for payment of dues had drawn a cheque No.002007 of ICICI Bank, Korba on 15.11.2010 of Rs.2,00,000/- from his account. Respondent No.1 presented the cheque for encashment in UCO Bank, Korba on 29.11.2010. When the cheque was dishonoured on account of insufficient balance in the account of the applicant, respondent No.1 then issued a legal notice on 13.12.2010, which was received by the applicant on 15.12.2010 to

which the applicant did not respond. Subsequent to which, respondent No.1 filed a complaint on 10.1.2011.

3. The trial Court took cognizance against the applicant and after reading out the substance of accusation against him under Section 138 of the NI Act, the applicant was subjected to trial and convicted for the offence under Section 138 of the NI Act, and he was sentenced with RI for one year with order of paying compensation of Rs.2,25,000/- to respondent No.1 with default stipulation. Therefore, the applicant preferred Criminal Appeal No. 32 of 2016 before the Court of Sessions Judge and by the judgment dated 29.8.2016, the appellate Court has upheld the conviction and sentence against the applicant. Hence, this revision.
4. It is submitted by counsel for the applicant that in fact there had been an agreement for sale of land between the applicant and respondent No.1 which was subsequently cancelled. The applicant had given the cheque in security for taking advance by him in the said transaction, however, after returning the amount in cash respondent No.1 had deliberately retained the cheque and has misused it, therefore, the presentation of cheque in bank by respondent No.1 was done with a fraudulent intent and thereafter, the complaint has been filed maliciously. The trial Court and Appellate Court have not appreciated the evidence in its true spirit and convicted the applicant. Therefore, it is prayed that this revision be allowed and the conviction and sentence against the applicant by the Courts below be set aside.
5. Learned counsel for respondent No.1 opposes the submissions made and the grounds raised in the revision petition. It is submitted by counsel for respondent No.1 that the applicant has created a new story in his defence regarding the return of the advance amount in cash. The trial Court and the Appellate Court have correctly appreciated the

evidence on record and convicted the applicant. Hence, this revision petition is not maintainable.

6. Heard counsel for both the parties and perused the documents.
7. On perusal of the evidence present in the record of the trial Court, it is admitted that the applicant had issued a cheque in favour of respondent No.1 for payment of Rs.2,00,000/- against the advance taken by him for the agreement to sale of land which was later on cancelled. The ground raised in this revision petition that the applicant had in fact returned the amount to respondent No.1 in cash, needs to be examined.
8. Gurmeet Singh Lamba (CW-1) has given the statement in support of his complaint in examination-in-chief. In cross-examination, he has denied the adverse suggestions and also denied that the applicant had made refund of any advance amount to him. The applicant has not led any evidence in defence to prove his case that he has infact made the refund of the amount to respondent No.1. Therefore, only on the basis of the suggestions given by the applicant and denied by respondent No.1, it cannot be held that the applicant had infact made refund of the advance amount to respondent No.1 in cash. Therefore, there appears to be no ground for interference in the impugned judgment of conviction and sentence by the Appellate Court and also in the judgment of conviction of the trial Court. Hence, for these reasons, this revision petition is found without any substance, which is liable to be dismissed.
9. Accordingly, this revision petition is dismissed.

Sd/-

(Rajendra Chandra Singh Samant)
Judge